

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SURROGATE ON BEHALF OF STUDENT,

v.

COUNTY OF SACRAMENTO OFFICE OF
EDUCATION.

OAH CASE NO. 2013020042

ORDER DENYING COUNTY OF
SACRAMENTO OFFICE OF
EDUCATION'S MOTION TO DISMISS

On January 31, 2013, Parent on behalf of Student filed a due process hearing request (complaint) naming the County of Sacramento Office of Education (SCOE) and the County of Sacramento Department of Probation (Probation) as respondents.

On February 15, 2013, SCOE filed a motion to dismiss on the ground that the petitioner lacked legal standing to request due process for Student. On February 21, 2013, Student filed opposition.

APPLICABLE LAW

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE). (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A parent, among others, has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Based on the above, OAH does not have jurisdiction to entertain claims by a person who does not hold the Student’s education rights.

The definition of “parent” under the governing federal and state statutes and regulations is broad, and may include:

- (1) Pupils’ biological or adoptive parents;

- (2) Foster parents if the authority of the biological or adoptive parents to make educational decisions on behalf of the pupil has been limited by court order;
- (3) Guardians generally authorized to act as pupils' parents, or authorized to make educational decisions for the pupil, inclusive of responsible adults appointed by the court in accordance with Sections 361 and 726 of the Welfare and Institutions Code;
- (4) Relatives, or other individuals who are legally responsible for the pupil and with whom the pupil lives, acting in the place of the biological or adoptive parents; or
- (5) Surrogate parents appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations and Section 1439(a)(5) of Title 20 of the United States.

(Ed. Code, §§ 56028, subd. (a)(1)-(5) & 56050, subds. (a) and (b); see also 20 U.S.C. § 1401(23); 34 C.F.R. § 300.30 (2006).)

The appointment of a guardian to make educational decisions for a pupil is limited by statute. Where a judicial decree or order has specified the parent responsible for making educational decisions on behalf of the pupil, pursuant to Education Code section 56028, subdivision (a)(1) to (4), the school district cannot appoint a surrogate parent. (Ed Code § 56028, subd. (b)(2).) Only the court can modify its own judicial decree or order specifying the parent. School districts must consider the legal guardian, as the pupil's parent, whenever a judicial decree or order authorizes a guardian to make educational decisions on behalf of the pupil. (*Ibid.*.)

Although school districts must appoint a surrogate parent for the purpose of making educational decisions when no parent, as defined at Education Code, section 56028, subdivisions (a)(1) through (4), can be found, this requirement does not bar a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services. (Gov. Code § 7579.5, subd. (n).)

DISCUSSION

SCOE moves to dismiss Student's complaint in its entirety based upon lack of standing of the petitioner, Kate Chilcote, identified in the complaint as a "surrogate" and alleged in Student's complaint to have attended individualized education program (IEP) team meetings and interacted with educational agencies on Student's behalf. SCOE contends that

Student's grandmother (Grandmother), not Ms. Chilcote, was appointed Student's guardian and holder of Student's educational rights by the juvenile court, and that Welfare and Institutions Code, section 361, subdivision (a), which provides that a court appointed guardian remains in that capacity until the child turns 18 or the guardianship is modified by court order, bars Grandmother from assigning Student's educational rights to Ms. Chilcote.

Student opposes the motion, citing Government Code, section 7579.5, subdivision (n), providing that parents and guardians are not barred from designating other adults to represent the disabled child's interests. Student also attaches to its opposition papers a series of unidentified, unauthenticated documents, purporting to show that Grandmother provided an express assignment of educational rights to Ms. Chilcote which was acknowledged by SCOE in communicating with Ms. Chilcote concerning Student's educational program, and argues that SCOE is estopped to assert that Ms. Chilcote is not the holder of Student's educational rights for due process purposes.

Ms. Chilcote has not alleged that she has authority to bring this action. SCOE is correct in stating that Ms. Chilcote must demonstrate that she is a parent or holder of educational rights for Student in order to obtain the relief requested. However, the failure to allege this authority does not require that the complaint be dismissed. The IDEA only requires that the complaint state: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. SCOE has not alleged a deficiency in any of the three enumerated areas.

Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc., OAH will not dismiss claims that have otherwise been properly pleaded. SCOE fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary adjudication of an issue prior to giving a petitioner the opportunity to develop a factual record at hearing. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

Here, in order to obtain the relief requested in the complaint at hearing, Ms. Chilcote will be required to prove her right to such relief. Such a showing must include that she, as a surrogate, holds educational rights or held educational rights for Student during the applicable time period, whether by court order, valid assignment, or otherwise. SCOE's motion to dismiss requires a factual determination of disputed facts similar to that required for a summary judgment motion. The IDEA and the California education code do not provide for summary adjudication or summary judgment and therefore, SCOE's motion must be denied.

ORDER

1. County of Sacramento Office of Education's motion to dismiss is denied.
2. This matter shall proceed as scheduled, and all dates shall remain on calendar.

Dated: March 8, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings